



State of Connecticut
SENATOR DONALD E. WILLIAMS, JR.
Twenty-ninth District
President Pro Tempore

**Testimony before the Judiciary Committee
Senator Donald E. Williams, Jr.**

March 3, 2014

In Support of SB 258, AAC Bad Faith Claims or Assertions of Patent Infringement

Senator Coleman, Representative Fox, distinguished members of the Judiciary Committee, I submit before you today testimony in support of SB 258.

Patent assertion entities, sometimes referred to as "patent trolls", are entities that purchase patents with the sole intention of asserting them for profit. While most owners of patents seek to legitimately protect their proprietary interests, the number of non-practicing patent holders that threaten lawsuits is on the rise. These assertions are often based on the ownership of suspect or overly broad patents and are made by entities with no intention of using the patent in developing new products or technologies.

Patent assertion entities' general practice is to threaten a lawsuit and demand license fees with no actual intention of suing. If a fraction of the targets are coerced into paying a license fee without going to court, the patent troll is unfairly enriched at the expense of companies that contribute to our economy.

Examples of the types of patents at issue involve information technology that companies utilize on their websites, or via online communication or data storage. Software patents, in particular, can be overbroad and vague. In Connecticut, companies such as Sikorsky, ESPN, and Foxwoods have been sued by such entities as well as small businesses that cannot afford litigation costs. Across the country, 90% of all companies sued by patent assertion entities in 2011 were small and medium size businesses.¹ Small companies, especially fledgling enterprises, can be intimidated into settling these suits for large sums of money due to the risk and costs associated with going to trial. An employment services company in Old Lyme that finds work for people with disabilities was threatened with a lawsuit for using the scan-to-email function on its copy machine and was asked to pay more than \$75,000 in licensing fees.² The end-user who legally purchases such a machine should not be required to pay exorbitant fees or be harassed by the

¹ Study available at http://www.bu.edu/law/news/BessenMeurer_patenttrolls.shtml.

² "Patent trolls damage innovation here and across the country," Michael Beckerman, 9/22/13. Available at <http://www.theday.com/article/20130922/OP05/309229962>.



threat of lawsuits. The resources required to defend such suits can deter or quash start-up firms and deplete the funds of established companies.

In an effort to combat this problem and prevent bad faith claims and frivolous lawsuits, SB 258 will create a private cause of action for the targets of patent assertion entities. Vermont recently passed a similar law. Essentially, the bill would deter patent holders from sending vague or harassing letters in order to coerce or threaten companies into paying improper license fees. It requires that any demand letter or patent infringement assertion must include specific information about the patent, the patent holder and the alleged infringement in order for the target to investigate the assertion.

The law establishes criteria to assist judges in differentiating between a good faith and a bad faith claim. In finding a good faith claim, the court may consider, among other criteria, whether the person making the infringement claim is the inventor, or makes a substantial investment in the use of the patent or in the production or sale of a product covered by the patent, and whether he has successfully enforced the patent through litigation.

Thank you for considering this piece of legislation.